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REMARKS

The below remarks are presented in response to the Office Action of February 24, 2005. No new matter has been entered. Reconsideration of the above-referenced application is respectfully requested.

Claim Rejections – 35 USC 102(e)

Claims 1-18, 20-27, 29, and 30 stand rejected under 35 USC 102(e) as being anticipated by Salla et al (U.S. Pat. No. 6,771,999 B2).

Applicants respectfully note that Salla et al does not qualify as a 102(e) reference, as both the present application and Salla et al were filed on December 4, 2002.

As listed by the Examiner, A person shall be entitled to a patent unless:

(e) the invention was described in - (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Salla et al does not qualify as prior art under either sections (1) or (2) of 102(e). Specifically, Salla et al is not a published application (as in section (1)) nor a patent (as in section (2)) that is "filed in the United States before the invention by the applicant for patent". Most notably, Salla et al was not filed before the present application, as this application and the application for the Salla et al patent were both filed on the same day (December 4, 2002), and, as an aside, by the same assignee.

The present application and the application for the Salla et al patent were filed concurrently, as noted in Col. 4, lines 18-22 of Salla et al which state: "*Methods and systems for satisfying these conditions for cardiac, respiratory, and peripheral pulse gating are disclosed in U.S. patent application Ser. No. 10/065,960, filed concurrently herewith, and incorporated by reference in its entirety.*"

Thus, it is respectfully submitted that Salla et al cannot be applied against the presently pending claims, and that this rejection should be removed. Therefore, it is further respectfully

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submitted that the presently pending claims are patentable with respect to the applied prior art and allowance is respectfully requested.

**Claim Rejections -- 35 USC 103**

Claims 19, 28, and 31 stand rejected under 35 USC 103(a) as being unpatentable over Salla et al (U.S. Pat. No. 6,771,999) in view of Arcelus (U.S. Pat. No. 6,149,602).

It is respectfully noted that claims 19, 28, and 31 are all dependent claims upon claims 18, 25, and 25, respectively. As claims 18 and 25 are described above as patentable with respect to Salla et al, it follows that all dependent claims should be deemed patentable with respect to the prior art as well.

Additionally, it is noted that a patent, or other publication, must qualify under at least one section of 102 in order to be used in a 103 reference. As Salla et al does not qualify as prior art under 102, it cannot qualify as prior art under 103. Thus, it is further respectfully submitted that the presently pending claims are patentable with respect to the prior art.

*Even if* Salla et al qualified as prior art under 102(c) (which it does not), it should be noted that 35 U.S.C. 103(c) which states: (c) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (c), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. Since both U.S. Pat. No. 6,771,999 (Salla et al) and U.S. Pat. App. No. 10/065,960 (the present application) were, at the time the invention of U.S. Patent Application No. 10/065,960 was made, owned by GE Medical Systems Global Technology Company, LLC, Salla et al would be unavailable as a reference for this rejection.

It is understood that Arcelus was used in combination with Salla et al to reject claims 19, 28, and 31, but since Salla et al is not usable as a reference, it is noted that Arcelus alone cannot be used to reject the claims for the following reasons: It is noted that Arcelus fails to disclose an accelerometer, as recited in Claim 19, and therefore cannot disclose or teach an accelerometer strapped to a wrist. Arcelus also does not disclose a fluid filled conduction tube, as recited in Claim 28, and therefore cannot disclose or teach attaching a first end of a fluid filled conduction tube to a wrist. Arcelus also does not disclose a non-electrical sensor having a bandwidth of at least 125 Hz, and therefore also does not read on Claim 31.

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For at least these reasons, it is respectfully submitted that Claims 19, 28, and 31 are patentable with respect to the prior art, and allowance is respectfully requested.

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CONCLUSION

This, it is respectfully submitted that all of the Examiner's rejections have been addressed and it is further respectfully submitted that all of the pending claims, Claims 1-31 are allowable over the prior art and allowance is respectfully requested.

If, however, any issues remain, the Examiner is cordially invited to contact the undersigned so that any such issues may be promptly resolved.

Although fees are dealt with in an accompanying sheet, if there are any additional charges with respect to this Amendment and Response, please charge them to Deposit Account No. 07-0845 maintained by Applicants.

Respectfully submitted,

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